

Progressive Taxation, HR and Finance Legislation



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Coverage

- ❑ Progressive Taxation
- ❑ Overview of Employment & Labour Laws
- ❑ Employment Laws & Employees
- ❑ Employment Laws in Other Countries
- ❑ HR issues
- ❑ The Financial Side
- ❑ The Reform Recommendations

Structure of Tax System in India

- The Department of Revenue of the Finance Ministry of the Government of India is responsible for the
 - computation;
 - levy as well as collection of most the taxes in the country.

However, some of the taxes are even levied solely by the Local State Bodies or the respective governments of the different states in the nation.

Statistics on Total Tax Revenue – 2010-11

- Total Tax Revenue of Centre & States - 2010-11
 - Direct Taxes – Rs. 4,00,000 crores
 - Indirect Taxes – Rs. 7,00,000 crores
 - Total Tax Revenue – Rs. 11,00,000 crores

Types of Taxes

- Progressive,
- Regressive and
- Constant.

S. N O.	Taxes Levied by Central Government
1	Taxes on income other than agricultural income (List I, Entry 82)
2	Duties of customs including export duties (List I, Entry 83)
3	Duties of excise on tobacco and other goods manufactured or produced in India except (i) alcoholic liquor for human consumption, and (ii) opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in (ii). (List I, Entry 84)
4	Corporation Tax (List I, Entry 85)
5	Taxes on capital value of assets, exclusive of agricultural land, of individuals and companies, taxes on capital of companies (List I, Entry 86)
6	Estate duty in respect of property other than agricultural land (List I, Entry 87)

7	Duties in respect of succession to property other than agricultural land (List I, Entry 88)
8	Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freight (List I, Entry 89)
9	Taxes other than stamp duties on transactions in stock exchanges and futures markets (List I, Entry 90)
10	Taxes on the sale or purchase of newspapers and on advertisements published therein (List I, Entry 92)
11	Taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce (List I, Entry 92A)
12	Taxes on the consignment of goods in the course of inter-State trade or commerce (List I, Entry 93A)
13	All residuary types of taxes not listed in any of the three lists (List I, Entry 97)

S. N o.	Taxes levied by State Governments
1	Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues (List II, Entry 45)
2	Taxes on agricultural income (List II, Entry 46)
3	Duties in respect of succession to agricultural income (List II, Entry 47)
4	Estate Duty in respect of agricultural income (List II, Entry 48)
5	Taxes on lands and buildings (List II, Entry 49)
6	Taxes on mineral rights (List II, Entry 50)
7	Duties of excise for following goods manufactured or produced within the State (i) alcoholic liquors for human consumption, and (ii) opium, Indian hemp and other narcotic drugs and narcotics (List II, Entry 51)
8	Taxes on entry of goods into a local area for consumption, use or sale therein (List II, Entry 52)
9	Taxes on the consumption or sale of electricity (List II, Entry 53)

11	Taxes on advertisements (List II, Entry 55)
12	Taxes on goods and passengers carried by roads or on inland waterways (List II, Entry 56)
13	Taxes on vehicles suitable for use on roads (List II, Entry 57)
14	Taxes on animals and boats (List II, Entry 58)
15	Tolls (List II, Entry 59)
16	Taxes on profession, trades, callings and employments (List II, Entry 60)
17	Capitation taxes (List II, Entry 61)
18	Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling (List II, Entry 62)
19	Stamp duty (List II, Entry 63) www.caaa.in

Taxes Levied by the Local Bodies

- The Octroi Tax or
- The Entry Tax

Tax Incentives in India

- Allowance for accelerated depreciation
- Corporate profit
- Certain expense deduction on the basis of some particular conditions

India Income tax slabs for FY 2012-2013 for General tax payers

Income tax slab (in Rs.)	Tax
□ 0 to 2,00,000	□ No Tax
□ 2,00,001 to 5,00,000	□ 10%
□ 5,00,001 to 10,00,000	□ 20%
□ Above 10,00,000	□ 30%

India Income tax slabs for FY 2011-2012 for General tax payers

Income tax slab (in Rs.)	Tax
□ 0 to 1,80,000	□ No Tax
□ 1,80,001 to 5,00,000	□ 10%
□ 5,00,001 to 10,00,000	□ 20%
□ Above 10,00,000	□ 30%

India Income tax slabs for FY 2012-2013 for General tax payers

Income tax slab (in Rs.)	Tax
□ 0 to 2,00,000	□ No Tax
□ 2,00,001 to 5,00,000	□ 10%
□ 5,00,001 to 10,00,000	□ 20%
□ Above 10,00,000	□ 30%

India Income tax slabs for FY 2011-2012 for Female tax payers

Income tax slab (in Rs.)	Tax
□ 0 to 1,90,000	□ No tax
□ 1,90,001 to 5,00,000	□ 10%
□ 5,00,001 to 10,00,000	□ 20%
□ Above 10,00,000	□ 30%

India Income tax slabs for FY 2012-2013 for Female tax payers

Income tax slab (in Rs.)	Tax
□ 0 to 2,00,000	□ No tax
□ 2,00,001 to 5,00,000	□ 10%
□ 5,00,001 to 10,00,000	□ 20%
□ Above 10,00,000	□ 30%

What is Progressive Taxation?

- Progressive taxation or taxes which
 - increase with the income levels
 - are adopted in most of the countries across the world
- Benefits
 - Increased tax revenues
 - Encourages small scale businesses
 - Increases the purchase power of a great majority of the population
 - Ability to support welfare schemes

What is Regressive Taxation?

- Regressive taxation implies
 - taxes falling with increase in income levels

Flat Rate of Tax

Constant or flat rate of taxes are found in many countries which refer to a uniform rate of taxation for all categories or all income brackets

Evaluating the Progressivity of a particular Tax Structure

- Progressivity of a particular tax system evaluated through
 - Nominal tax rate structure;
 - Tax base to which these rates are applied;
 - Enforcement and Compliance issues;
 - Scope of the inquiry, i.e., is one concerned exclusively with income taxation or must other taxes (wealth taxes, inheritance taxes, excise taxes, etc.)

Financial Legislations in India

- ❑ The Banking Regulation Act ,1949
- ❑ The Chit Funds Act ,1982
- ❑ The DICGC Act, 1961
- ❑ The NABARD Act,1981
- ❑ The National Housing Bank Act ,1987
- ❑ The RBI Act, 1934
- ❑ The SEBI Act ,1992
- ❑ The Insurance Act ,1938
- ❑ The IRDA Act 1999

Financial Legislations in India

- ❑ Companies (Acceptance of Deposit) Rules, 1975
- ❑ Companies (Acceptance of Deposits Amendment) Rules, 1997
- ❑ Foreign Exchange Management (Deposit) Regulations, 2000
- ❑ Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000
- ❑ Securities Contracts (Regulation) Act 1956

Financial Legislations in India

- ❑ The Prevention of Money Laundering Act, 2002 (PMLA 2002)
- ❑ The Benami Transactions (Prohibition) Act, 1988
- ❑ Smugglers and Foreign Exchange Manipulators Forfeiture of Property Act, 1976
- ❑ The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)

Aim of Regulation

- The aims of financial regulators are usually:
 - To prevent cases of market manipulation, such as insider trading
 - To ensure competence of providers of financial services
 - To protect clients, and investigate complaints
 - To maintain confidence in the financial system
 - To reduce violations under laws

International Financial Institutions

- ❑ African Development Bank
- ❑ Asian Development Bank
- ❑ Bank for International Settlements
- ❑ European Bank for Reconstruction and Development
- ❑ European Central Bank
- ❑ European Investment Bank
- ❑ Inter-American Development Bank
- ❑ International Monetary Fund

International Organizations

- ❑ Directory of Economic, Commodity and Development Organizations (IMF)
- ❑ European Commission - Economic and Financial Affairs
- ❑ International Organization of Securities Commissions
- ❑ International Project Finance Association
- ❑ International Swaps and Derivatives Association

International Organizations

- Organisation for Economic Co-operation and Development
 - Financial, Fiscal and Enterprise Affairs
- United Nations
 - Financing for Development Website
- World Bank Group
 - Foreign Investment Advisory Service
 - International Centre for the Settlement of Investment Disputes
 - Multilateral Investment Guarantee Agency
 - International Finance Corporation

Treaties and Agreements

- ❑ Articles of Agreement of the International Monetary Fund
- ❑ Articles of Agreement of the World Bank Group
- ❑ Bilateral Investment Treaties (ICSID)
- ❑ Convention Establishing the Multilateral Investment Guarantee Agency
- ❑ Convention on the Settlement of Investment Disputes
- ❑ General Agreement on Trade in Services (GATS)
- ❑ Investment Treaties (OAS)

Treaties and Agreements

- ❑ List of U.S. Bilateral Investment Treaties (U.S. Dept. of State)
- ❑ Multilateral Agreement on Investment (OECD)
 - MAI Documentation
- ❑ OECD Guidelines for Multinational Enterprise
- ❑ OECD Legal Instruments on International Investment and Trade in Services
- ❑ Trade/Business Transactions Law (Private International Law Database) (U.S. Dept. of State)

List of financial regulatory authorities by country.

□ United States

- U.S. Securities and Exchange Commission (SEC)
- Financial Industry Regulatory Authority (FINRA)
- Commodity Futures Trading Commission (CFTC)
- Federal Reserve System ("Fed")
- Federal Deposit Insurance Corporation (FDIC)
- Office of the Comptroller of the Currency (OCC)
- National Credit Union Administration (NCUA)
- Office of Thrift Supervision (OTS)

List of financial regulatory authorities by country.

- ❑ Financial Services Authority (FSA), United Kingdom
- ❑ Financial Services Agency (FSA), Japan
- ❑ Federal Financial Supervisory Authority (BaFin), Germany
- ❑ Autorité des marchés financiers (France) (AMF), France
- ❑ Monetary Authority of Singapore (MAS), Singapore
- ❑ Swiss Financial Market Supervisory Authority (FINMA), Switzerland
- ❑ Commissione Nazionale per le Società e la Borsa (CONSOB), Italy

List of financial regulatory authorities by country.

- ❑ Netherlands Authority for the Financial Markets (*Autoriteit Financiële Markten*, AFM), Netherlands
- ❑ People's Republic of China
- ❑ China Securities Regulatory Commission (CSRC)
- ❑ China Insurance Regulatory Commission (CIRC)
- ❑ China Banking Regulatory Commission (CBRC)
- ❑ Securities and Exchange Commission (*Comissão de Valores Mobiliários*, CVM), Brazil

The Post -1991 Tax Reforms in India

- ❑ Tax reforms followed the work of various expert reports beginning with the Chelliah Commission in 1991
- ❑ Kelkar Commission in 2002
- ❑ Reforms involved the reduction of marginal income tax rates from an astronomical 95 percent-plus in the 1970s to a current 30 percent maximum rate
- ❑ Significant increase in the exemption amount

The Post -1991 Tax Reforms in India

- ❑ Attempts to expand the tax base by imposing more efficient taxes on the small business and service sector
- ❑ Increasingly assertive efforts to improve tax administration and identify potential taxpayers
- ❑ Important goal was increasing the share of direct vs. indirect taxes which had fallen during the previous decades
- ❑ The current Indian tax system includes an income tax imposed at rates of 10, 20, and 30 percent

Taxation in India

- ❑ The income tax, while on its surface progressive in nature, reaches only a relatively small number of affluent, largely urban wage-earners
- ❑ It accounts for only a modest amount of economic redistribution
- ❑ Tax administration and tax culture—the ability to encourage or (if necessary) compel people to pay taxes
- ❑ Effect of politics on India's tax choices

Tax Structure in India

- ❑ **Personal Income Tax** is administered by the Central Board of Direct Taxes (CBDT).
- ❑ **Corporate taxes** or taxes on corporate income are also administered by the Central Govt.
- ❑ Agricultural Income is not subject to income taxes as per the Income Tax Act of 1961.
- ❑ **Sales Taxes** which constitute the majority of indirect taxes are under the jurisdiction of the respective state governments.

Tax Structure in India

- ❑ **Indirect Taxes** imposed by the central government include excise duties being charged for the manufacture of the product giving the product a particular name, character and marketability.
- ❑ **The Central Board of Excise and Customs** administers the system and charges a 16% excise duty on most goods although some articles attract an additional 8% excise duty.
- ❑ **Service Taxes** which are also administered by the mentioned authority is levied at the rate of 12% (plus 3% education cess) for certain identified services.

Tax Structure in India in Comparison with the US

- ❑ In case of the **USA, Income Tax Rates** are administered by the different state governments
 - State Income Taxes differ across the different states of the country.
- ❑ In both the cases of India and the USA similar **tax exemptions** are allowed like contributions to pension funds and trusts or charities.

Tax Structure in India in Comparison with the US

- ❑ **Capital losses** are exempt from taxes in the Indian context and
- ❑ Several itemized and non-itemized contributions are exempt from income taxes in the US. These may include earnings from **life insurance contracts, casualty losses and interest paid on mortgage.**
- ❑ **Gratuities, commuted pensions, payment received on Voluntary Retirement Section and annual accretion to Provident Fund** account are exempt from income taxes in case of India.

Tax Structure in India in Comparison with the UK

- ❑ In case of the UK, **Income Taxes** are administered by Her Majesty Department of Revenue and Customs (HMRC) and various tax allowances are offered depending on the income and age of the individual.
- ❑ They do not differ across different states and counties.

Fact File

- *The rich pay a substantial share of taxes across the developed world, and this share has risen in recent decades.*
- *Rich Britons pay about 39% of total taxes while America's wealthiest households contribute a larger share to government than in any other OECD country, at 45%*

Fact File

- *According to the OECD (Organisation for Economic Co-operation and Development), a think-tank, the top 10% of earners contribute about a third of total tax revenues—28% in France, 31% in Germany and 42% in Italy.*

Labour Laws

- ❑ Body of laws, administrative rulings, and precedents
- ❑ Which address the relationship between and among employers, employees, and labor organizations,
- ❑ Often dealing with issues of public law.

Employment Laws

Deal with

- Employment Contracts and
- Issues regarding Employment and
- Workplace Discrimination and
- Other Private Law Issues

Employment Laws

“Employment Laws cover broader area than labour laws in the sense that

- employment laws cover all the areas of employer/employee relationship*
- except the negotiation process*
- covered by labour law and collective bargaining*

The Roots of Employment Law

- ❑ The labour movement has contributed towards the enactment of laws protecting labour rights in the 19th and 20th centuries
- ❑ Labour legislation in India can be traced back to the history of British colonialism
- ❑ The British enacted the Factories Act in 1883
- ❑ The first stipulation of eight hours of work, the abolition of child labour, and the restriction of women in night employment, and the introduction of overtime wages for work beyond eight hours were introduced

The Roots of Employment Law

- ❑ The earliest Indian statute to regulate the relationship between employer and his workmen was the **Trade Dispute Act, 1929 (Act 7 of 1929)**
- ❑ **Industrial Disputes Act** (the Act) brought into force on 01.04.1947 repealing the Trade Disputes Act 1929
- ❑ India provides for core labour standards of ILO for welfare of workers

Why should there be Employment Regulation ?

- Free employment markets are imperfect
- Employers abuse workers to extract the maximum
- Employers discriminate against
 - disadvantaged groups,
 - underpay workers who are immobile or invest in firm-specific capital,
 - fire workers who then need to be supported by the state,
 - force employees to work more than they wish under the threat of dismissal,
 - fail to insure workers against the risk of death, illness or disability,

What does Regulation Aim at?

- **Governments forbid discrimination in the labor market** and endow the workers with some “basic rights” in the on-going employment relationships, such as maternity leaves or the minimum wage.
- **Governments regulate employment relationships**, by for example restricting the range of feasible contracts and raising the costs of both laying off workers and increasing hours of work.
- **In response to the power of employers against workers, governments empower labor unions to represent workers collectively**, and protect particular union strategies in negotiations with employers.
- **Governments themselves provide social insurance** against unemployment, old age, disability, sickness and health, or death.

2 Major Divisions of Employment Laws

- ❑ Factory
- ❑ Shops and Commercial Establishments

8 Categories of Labour & Employment Laws

- ❑ Laws related to Industrial Relations
- ❑ Laws related to Wages
- ❑ Laws related to Specific Industries
- ❑ Laws related to Equality and Empowerment of Women
- ❑ Laws related to Deprived and Disadvantaged Sections of the Society
- ❑ Laws related to Social Security
- ❑ Laws related to Employment & Training
- ❑ Others

ILO's 8 Core Conventions on Fundamental Human Rights

- ❑ C-29 Forced Labour Convention, 1930
- ❑ C-87 Freedom of Association and Protection of the Right to Organise Convention, 1949
- ❑ C-98 Right to Organise and Collective Bargaining Convention, 1949
- ❑ C-100 Equal Remuneration Convention, 1951
- ❑ C-105 Abolition of Forced Labour Convention, 1957
- ❑ C-111 Discrimination (Employment and Occupation) Convention, 1958
- ❑ C-138 Minimum Age Convention, 1973
- ❑ C-182 Worst Forms of Child Labour Convention, 1999

Labour Legislations Globally

- ❑ **Collective labour law** relates to the tripartite relationship between employee, employer and union.
- ❑ **Individual labour law** concerns employees' rights at work and through the contract for work.
- ❑ **Contract of employment**
- ❑ **Minimum wage**
- ❑ **Working time**
- ❑ **Health and safety**
- ❑ **Anti-discrimination**
- ❑ **Unfair dismissal**

The Constraints

- ❑ Numerous Legislations Applicable
- ❑ Complex Set of Central and State Legislations
- ❑ Hinders the growth of Manufacturing Sector
- ❑ Focus is on Organized Sector with lesser employees
- ❑ Organized sector governed by close 50 central and state legislations
- ❑ Protects employees who are 'workmen'- defined under various enactments esp under Industrial Disputes Act, 1947

The Constraints

- ❑ Different statutes define 'workmen' differently - an employee entitled to a benefit under one statute may not always be entitled to benefits under another.
- ❑ Outdated Trade Union Laws
- ❑ Dilatory methods of adjudication of industrial disputes.
- ❑ Complex procedures are out of sync with the essential pre-requisites for the success

The Constraints

- Unwieldy number of adjudicating authorities —
 - conciliation officers,
 - conciliation boards,
 - courts of inquiry,
 - labour courts,
 - industrial tribunals and
 - the national industrial tribunal

Indian Economy

- Organized Sector – Lesser Employees
- Unorganized Sector – More Employees

Fact File

India's labour market is ranked 81 for degree of labor market flexibility in the Global Competitiveness Report (GCR) 2011-12

Categories of Employees

- ❑ **Government employees** – Governed by Constitution of India
- ❑ **PSU Employees** – Own service regulations based on Statutory Orders
- ❑ **Private sector employees** –
 - **Managerial Staff** – managerial, administrative & supervisory
 - **Workman**

Unorganized Sector

- ❑ Unorganised work force due to lack of a common objective as a result of
 - casual nature of employment,
 - ignorance or illiteracy,
 - superior strength of the employer singly or in combination etc.
- ❑ Examples
 - ❑ Construction workers,
 - ❑ Labour employed in cottage industry,
 - ❑ Handloom/Powerloom workers,
 - ❑ Sweepers and scavengers,
 - ❑ Beedi and cigar workers etc.

Fact File

- *Unorganised Sector Workers' Social Security Act, 2008*
 - *To ensure the welfare of workers in the unorganised sector which, include*
 - *weavers,*
 - *handloom workers,*
 - *fishermen and fisherwomen,*
 - *toddy tappers,*
 - *leather workers,*
 - *plantation labour,*
 - *beedi workers,*
 - National Social Security Board set up to recommend formulation of social security schemes viz. life and disability cover, health and maternity benefits, old age protection and any other benefits etc.

Laws – Unorganized Sector

- ❑ Building and Construction Workers Act 1996,
- ❑ The Bonded Labour System (Abolition) Act 1976,
- ❑ The Interstate Migrant Workers Act 1979,
- ❑ The Dock Workers Act 1986,
- ❑ The Plantation Labour Act 1951,
- ❑ The Motor Transport Workers Act, 1961
- ❑ The Beedi and Cigar Workers Act 1966,
- ❑ The Child Labour (Prohibition and Regulation) Act 1986,
- ❑ The Mine Act 1952.
- ❑ The Contract Labour (Regulation & abolition), Act, 1970
- ❑ The Minimum Wages Act, 1948
- ❑ Inter State Migrant Workmen (Regulation) Act, 1979

ILO on Home Based Workers

- Article 4 of the ILO Convention No. 177 of 1996 on home-based work
 - Calls for promotion of equality of treatment for home workers
 - including right to organise,
 - to protection against discrimination,
 - to occupational safety and health,
 - remuneration,
 - social security,
 - access to training, etc

Fact File

“The National Commission on Rural Labour (NCRL) had observed that there was acute indebtedness amongst the rural and agricultural workers and mentioned that 16.08 million rural households including those of agricultural labourers were indebted.”

Women & Employment Laws

- All the major Central Labour Laws are applicable to women workers
- Few Legislations
 - **The Maternity Benefit Act, 1961**
 - **The Equal Remuneration Act, 1976** - no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law
 - **Industrial Employment (Standing Orders) Act, 1946** – Implementation guidelines for employers empowering women of their right to work

Proposal for Statutory Scheme for Maternity Benefits

- The scheme covers all women, the only discriminating factor being the economic criteria
- The access to this scheme should be through multiple channels and agencies.
- The sources of funding would be
 - Employees and
 - The state at the central, state, district (or municipal) and local (ward or panchayat) levels;
 - Employers and community contributions as followed in Thailand and China, where the community sponsors one worker for every 100 families to ensure the proper delivery of benefits

Fact File

- ❑ *The Accra Market Women's Association in Ghana developed a childcare program that kept children safe while mothers conducted business.*
- ❑ *The main international convention covering maternity benefits is the IO's Maternity Entitlement Convention, 2000.*

Employment Laws in Other Countries

- ❑ **New Zealand & Portugal** - Neither country exempts part time workers from mandatory benefits of full time workers, and neither makes it easier or less costly to terminate them.
- ❑ Fixed term contracts can be entered in **New Zealand** for any reason and there is no maximum duration provided by the law
- ❑ In **Portugal**, fixed term contracts are allowed for a maximum of three years, are granted for specific situations (such as substitution for another worker or seasonal activity) and are therefore temporary in nature

Employment Laws in Other Countries

- For unemployment benefits, New Zealand has no minimum contribution period, while Portugal mandates 18 months.
- **The US Employment Law**
 - The American legal system is part of the common law tradition
 - A legal concept unique to the United States known as the “at-will” employment doctrine.
 - This doctrine provides that an employer in the United States is free to terminate an employee at any time, without notice and without cause, so long as it is not for an unlawful reason
 - The federal Fair Credit Reporting Act (“FCRA”) applies when an employer obtains a background check from a “consumer reporting agency” regarding an applicant when the background information sought by the employer is either a “consumer report” or an “investigative consumer report.”

Employment Laws in Other Countries

- The Drug-Free Workplace Act of 1988 applies to all federal procurement contracts of \$100,000 or more and provides that no government contract will be awarded unless the prospective contractor certifies to the government agency that it will maintain a drug-free workplace
- U.S. employees are automatically covered by federal and state common law and statutory entitlements and protections. Therefore, a written employment contract (see under section I chapter 6 on employment contracts) is not required.
- Unlike in many countries outside the United States, the common practice in the United States is to provide employees with a stand-alone PIIA (Proprietary Information and Invention Agreement) which will be presented with the offer letter.

Employment Laws in Other Countries

- The Fair Labor Standards Act of 1938 (“FLSA”) is a Depression-era statute enacted to provide incentives to employers to hire additional workers
- Federal law prohibits discrimination against employees and applicants based on the individual’s race, color, religion, sex (including pregnancy), national origin, age (for those aged 40 or older), disability or genetic information
- The Employee Retirement Income Security Act of 1974 and Internal Revenue Code of 1986 regulate employer-provided pension benefits
- There are two basic types of pensions in the United States: defined benefit plans and defined contribution plans.

Fact File

*Strong Domestic market insulates the
Employment Market in India*

Employees' Benefits from Employment Laws

- **The Employees' State Insurance Act, 1948 (the "ESIA)** seeks to guarantee reasonably good medical care to workers and their immediate dependents –
 - Applies to all factories and establishments where 10 or more persons are employed.
- **The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the "EPFA")** – a social security legislation to provide for a provident fund, family pension and insurance to employees.
 - EPFA is probably the most important social security legislation in India.

Employees' Benefits from Employment Laws

- **Payment of Gratuity Act, 1972 (POGA)** provides for the payment of gratuities (lump sum payment to the employee when the employee resigns or retires, or the employee's services are terminated by the employer) to employees in certain establishments.
- **The Factories Act of 1948** provides for the health, safety and welfare of the workers.
- **The Shops and Commercial Establishment Act of respective States** regulates the conditions of work and terms of employment of workers engaged in shops, commercial establishments, theatres, restaurants, etc.

Employees' Benefits from Employment Laws

- ❑ **The Maternity Benefit Act, 1961** provides for the grant of cash benefits to women workers for specified periods before and after confinements.
- ❑ **The Child Labour (Prohibition and Regulation) Act, 1986** prohibits the employment of young children below the age of 15 years in certain risky and unhealthy occupations.
- ❑ **The Payment of Wages Act, 1936**, regulates the timely payment of wages without any unauthorized deductions by the employers.

Employees' Benefits from Employment Laws

- ❑ **The Minimum Wages Act, 1948**, ensures the fixation and revision of minimum rates of wages in respect of certain scheduled industries involving hard labour.
- ❑ **The Industrial Disputes Act, 1947**, provides for the investigation, and settlement of industrial disputes by mediation, conciliation, adjudication and arbitration, there is scope for payment of compensation in cases of lay-off and retrenchment.
- ❑ **The Industrial Employment (Standing Orders) Act, 1946**, requires employers in Industrial establishments to define precisely the conditions of employment under them and make them known to their workmen. These rules, once certified, are binding on the parties for a minimum period of six months.

Employees' Benefits from Employment Laws

- ❑ **The Employees' Compensation Act, 1923**, provides for compensation to injured workmen of certain categories and in the case of fatal accidents to their dependants if the accidents arose out of and in the course of their employment. It also provides for payment of compensation in the case of certain occupational diseases.
- ❑ **The Indian Trade Unions Act, 1926**, recognizes the right of workers to organise into trade unions, and when registered, they have certain rights and obligations and function as autonomous bodies.

Fact File

The Organization of Economic Cooperation and Development (OECD) has sponsored the creation of a database of labor regulations in member countries

7 Key Existing and Future challenges for Indian Employment Laws

- Challenge of Globalisation
- Of Labour competitiveness vis a vis China and other nations
- Of redeployment of surplus manpower from agriculture and manufacturing to services and trade;
- Of recognising labor as human capital rather than as a cost;
- Of continuous employability of labour;
- Of enlarging and utilising effectively the infrastructure for education and training; and
- Of absorption of new technologies by labour using education and training.

Fact File

The World Bank has assembled a data base of International Labor Office certifications for 119 countries, which provide a partial view of the labor laws

Recommendations for Employment Law Reforms

- ❑ Labour Market Flexibility
- ❑ Simplifying Labour Laws
- ❑ Retrenchment and Layoff mechanisms to be simplified and expedited
- ❑ Political will to initiate Reforms to be emphasized
- ❑ Most statutes are more than 50 years old and amended very minimally. They need to be tuned up
- ❑ License and Registration requirements across various enactments are not in sync with today's globalized environment. This needs to be geared up

Recommendations for Employment Law Reforms

- ❑ Protection to employees should not impede business or the efficient allocation of capital.
- ❑ Nor should employees be protected to the extent that the law effectively precludes disciplinary action where it is warranted.
- ❑ Harmonising the various statutes which operate.
- ❑ Policy makers should move to a single window system for obtaining licences and registrations and, ultimately, work towards a single National Labour Code.

Globalized Environment

- ❑ Under contemporary globalization, international labor mobility has increased, while levels of exploitation and deregulation have accelerated.
- ❑ Current practices regarding labor migration represent fundamental policy dilemmas for States, social partners, and civil society.
- ❑ Globalization and trade liberalization have had contradictory impacts on employment conditions

The HR Issues

Human Resource challenges in Global environment

- ❑ **Rising economies such as those of China, India and Russia** not only are influencing trade and labor policies worldwide but also are affecting issues such as the environment and international politics.
- ❑ For HR professionals, the growing world market is putting greater emphasis on certain **HR competencies**. Those skills include the use of technology in managing human capital across the globe and the development of in-depth business knowledge that takes into account international differences in supply chains and labor environments.

Human Resource challenges in Global environment

- ❑ Most of the current discussion on emerging economies focuses on China. **The importance of China's economic and monetary policies** will only increase as its economy grows.
- ❑ A major issue will be how **China's economic dominance** will relate to its global political influence, given its current regime.

Human Resource challenges in Global environment

- ❑ In India, different economic influences are at work. For example, although emerging labor markets such as Russia and other former Soviet states are strong in science and engineering education, India is viewed as having an advantage in **customer-service outsourcing and the software industry**.
- ❑ The basis for India's advantage is its large number of educated yet relatively low-wage workers who are fluent in English.
- ❑ Moreover, unlike most Eastern European countries, **India has a relatively young population**, which could help promote rapid growth when China's population begins to age.

Human Resource challenges in Global environment

- ❑ In spite of the many unknowns, there are a few common assumptions among economists and futurists about what the **rise of growing economies such as India and China** could mean for the business environment.
- ❑ One expected result is that the more these economies grow, **the larger the world market** overall will become, which in turn will influence the types of products and services that are produced.
- ❑ A larger world market could also mean that national economies and industry sectors--as well as individual professionals--will become **more specialized**.

Human Resource Management in the Global Environment

- ❑ Managing global human resources is something that is growing.
- ❑ Companies are attempting to gain a competitive advantage and a way to accomplish this is to expand internationally.
- ❑ Business globally requires that adaptations be made to reflect cultural and other factors that differ from each country.
- ❑ Human resource regulations and laws vary among countries in character and detail.

Human Resource Management in the Global Environment

- ❑ Equal employment legislation exists to varying degrees.
- ❑ In some countries, laws address issues such as employment discrimination and sexual harassment.
- ❑ For example, in the United States, Title VII established the Equal Employment Opportunity Commission (EEOC) to administer and enforce the Civil Rights law at work.
- ❑ The main objective of the EEOC is to investigate job discrimination complaints from aggravated individuals.
- ❑ Global competition is driving changes in organizations throughout the world.

Performance Management

- ❑ Set specific job assignments for employees;
- ❑ Discuss job performance with employees and provide feedback on strengths and required improvements;
- ❑ Conduct annual or regular job performance evaluations;
- ❑ Plan for improved performance

Understanding the Common Principles

- All employment relationships are contractual;
- Employment contracts may be written or unwritten;
- Either employee or employer can end the employment relationship;

Employee Dismissal

- ❑ An employer may dismiss an employee with or without cause
- ❑ Unless there is cause for the termination an employer must provide sufficient notice to the employee

Employers Justifying Dismissal

- ❑ Dishonesty – theft, fraud etc,
- ❑ Intoxication,
- ❑ Illness, if not temporary,
- ❑ Insolence, and
- ❑ Incompetence.

Reasons why Employees may sue the Employers

- ❑ Breach of the duty of good faith during the course of employment;
- ❑ Intimidation;
- ❑ Defamation and loss of reputation;
- ❑ Intentional and/or negligent infliction of nervous shock;
- ❑ Sexual harassment; and
- ❑ Breach of fiduciary duty.

Establishing Just Cause in Relation to Poor Performance

- ❑ Reasonable objective standards of performance which were communicated to the employee;
- ❑ Suitable instruction and supervision was given to the employee to assist the employee in meeting the standards;
- ❑ The employee was not capable of meeting the standards;
- ❑ The employee was warned that failure to meet the standards would lead to dismissal; and
- ❑ The employee was afforded a reasonable time to correct the situation.

The employer should provide suitable evidence to the court

Good Faith Treatment of Employees

- ❑ An employer must treat its employees fairly and with good faith
- ❑ An employer must disclose to an employee the errors being made by the employee
- ❑ There should be compassionate, meaningful and progressive discipline process.
- ❑ It is insufficient for the employer to simply be critical of an employee's performance, without informing the employee how to improve
- ❑ Discipline process should be applied equally to all employees

Pre Employment – Clarity Areas

- General Principles Regarding Employment
- Applications and Advertisements Regarding Employment
- Discrimination in Employment
- Harassment in the Workplace
- Conclusions Regarding the Human Rights and Employment

The Financial Side of Employee Management

- Cost of Legal Compliance
- Cost of Implementing Employee Welfare Measures
- Cost of Monitoring effective implementation
- Cost of Maintaining Employees

Grooming Employee Performance using Progressive Discipline Practices

- ❑ Tool available to assist employees in understanding that there is a performance problem, and
- ❑ Should provide employees with a means to address the concern.
- ❑ The process consists of
 - ❑ Increasingly formal discipline efforts
 - ❑ Designed to fully inform employees of performance concerns
 - ❑ Providing employees with feedback regarding their improvement or lack thereof
 - ❑ Providing sufficient time to employees to improve their performance.

Grooming Employee Performance using Progressive Discipline Practices

- ❑ Hiring of employees through clearly worded written employment contracts containing detailed job descriptions.
- ❑ It should never be based upon inappropriate considerations, such as the sex of employees, their age or creed.
- ❑ It should not be used by means of punishing employees, but is instead designed to assist employees in meeting their full potential.

About the Author

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THANK YOU

